

**IN THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

*Plaintiff,*

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

*Defendants.*

**REDACTED - PUBLIC VERSION**

C.A. No. 1:22-cv-01377-MN

**DECLARATION OF JOE KIANI IN SUPPORT OF  
DEFENDANTS MASIMO CORPORATION AND SOUND UNITED, LLC'S  
OPPOSITION TO PLAINTIFF APPLE INC.'S  
MOTION FOR EXPEDITED DISCOVERY**

I, Joe Kiani, declare as follows:

1. I am the founder, Chief Executive Officer & Chairman of the Board of Masimo Corporation. I have personal knowledge of the matters set forth herein, and if I am called upon to testify, I could and would testify competently thereto. I submit this declaration in support of Masimo Corporation and Sound United, LLC's opposition to Apple Inc.'s motion to expedite discovery.

2. I have been the CEO of Masimo since 1989, when I founded the company as a startup in my condo. In 1998, Masimo spun certain technologies into a new company named Masimo Laboratories, Inc. The name of that company later changed to Cercacor Laboratories. I have been the CEO of Masimo and Cercacor since the companies were founded. Masimo and Cercacor collaborate on technology developments and license certain technologies to each other.

3. Masimo's products noninvasively monitor physiological parameters, such as oxygen saturation, pulse rate, respiratory rate, carboxyhemoglobin, total hemoglobin, and methemoglobin. The company's mission is to improve patient outcomes, reduce the cost of care, and take non-invasive monitoring to new sites and applications. Masimo has grown from a garage startup to a company whose products are used to monitor over 200 million patients a year and are the standard in 9 of the top 10 U.S. hospitals. Masimo now employs over 8000 people worldwide.

4. When I founded Masimo, conventional pulse oximetry was unreliable, particularly in the presence of patient movement or low peripheral blood flow. The industry had essentially given up on solving these problems. For the most critically ill patients with low peripheral blood flow and with babies who never stay still, clinicians had to endure excessive false alarms, frozen measurements, and inaccurate measurements. Masimo's pioneering technology, called Masimo Signal Extraction Technology® (SET®), revolutionized non-invasive patient monitoring and

solved these problems by providing the capability of Measure-through Motion and Low Perfusion™ pulse oximetry.

5. Following its initial success with Masimo SET®, Masimo re-invested its earnings heavily in non-invasively measuring other blood parameters, including total hemoglobin, carboxyhemoglobin, and methemoglobin. Masimo has continued to innovate, succeeding where others have consistently failed. Masimo was the first, and remains the only, provider of these life-saving technologies.

6. Use of Masimo's technology has been proven to reduce blindness in premature infants, detect congenital heart disease in infants, save lives on the general care floor and post-surgery in patients who are given opioids, save lives of Covid patients by remotely monitoring them, and improve blood transfusion management, all the while saving money.

7. Today, Masimo sells a variety of monitors, including Masimo Root (left) and Radius-7 wearable monitor (middle and right).



8. Masimo's technology is also integrated into over 100 third-party multi-parameter patient monitors, such as the monitor in the picture below, by integrating Masimo OEM circuit boards into their products.



9. When Masimo introduced Masimo SET in 1995, the then-market leader in pulse oximetry and other companies, much larger than Masimo, used Masimo's technology without Masimo's permission, which forced Masimo to pursue patent-infringement lawsuits. Masimo prevailed in those lawsuits. The defendants countersued Masimo for patent infringement, and Masimo was not found to infringe any of their patents.

10. Masimo's technology has been proven to be superior for patients in over 100 peer-reviewed studies. Our medical technology business has continued to grow for over 20 years at high-single to double-digits rates, including so far in 2022.

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Masimo launched a direct-to-consumer product, iSpO2, at the Las Vegas Consumer Electronics Show (CES) in 2012. iSpO2 is a pulse oximeter with Masimo SET that connects to smartphones. iSpO2 delivered Masimo SET pulse oximetry, and its launch garnered extensive positive media coverage. Promptly thereafter, Apple collaborated with Masimo to offer iSpO2 to its customers. Masimo soon launched MightySat, another consumer product with Masimo SET pulse oximetry. MightySat is a fully integrated finger-clip pulse oximeter with a display, which can wirelessly connect to smartphones. Below are pictures of iSpO2 (left) and MightySAT (right).



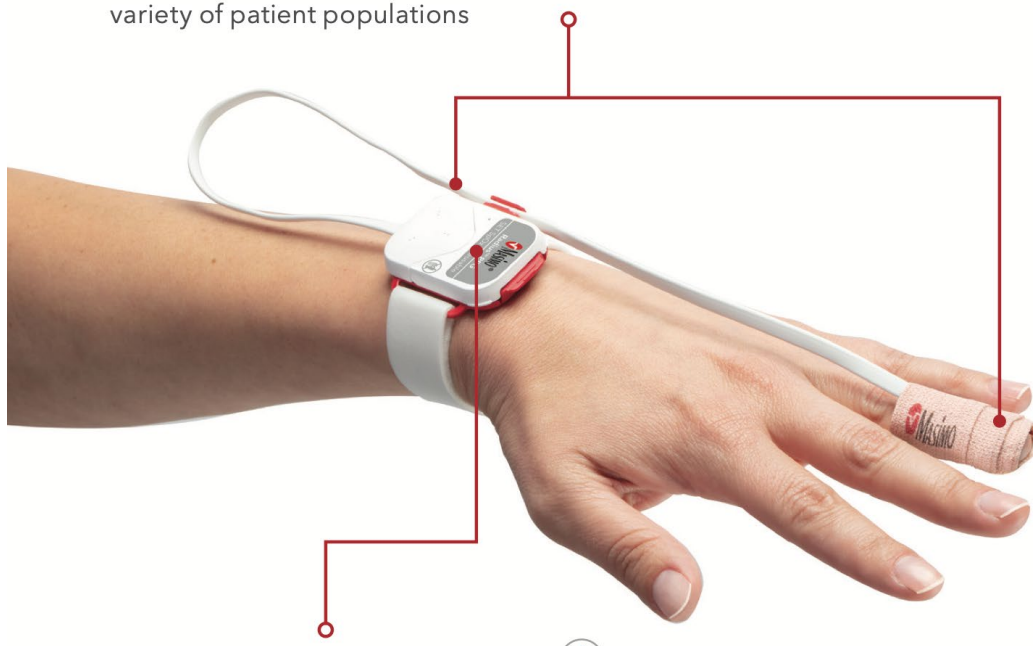
13. Since then, Masimo has continued to release new products to help people inside and outside of professional care settings. For example, Masimo released the Radius PPG sensor, which is Masimo's wireless, wrist-worn pulse oximeter that has been used in hospitals for years.

14. The Radius PPG is shown below, and more information about the device can be found at <https://www.masimo.com/products/sensors/radius-ppg>; [https://www.masimo.com/siteassets/us/documents/pdf/plm-11706d\\_product\\_information\\_radius\\_ppg\\_us.pdf](https://www.masimo.com/siteassets/us/documents/pdf/plm-11706d_product_information_radius_ppg_us.pdf); and <https://www.youtube.com/watch?v=JQbf8rva7Is> ("Radius PPG™ Tetherless Pulse Oximeter Training").



### **Radius PPG Single-patient-use Sensor**

- > Feather-weight sensor with adjustable wrist strap
- > Four-day battery life
- > Optional replaceable adhesive tapes\*
- > Multiple sensor types available to monitor a wide variety of patient populations





15. Radius PPG works with a variety of clinical monitors, as well as some consumer products, including: (1) Hospital monitors that normally would use a wired Masimo pulse oximetry sensor (2) “Masimo Sleep,” which is available directly to consumers to provide clinical grade data on the physiological status during sleep, and (3) “Masimo SafetyNet,” which allows doctors and hospitals to remotely monitor patients, including while they are recovering at home.

16. The Masimo SafetyNet® is a secure, cloud-based patient management platform featuring clinical-grade Masimo SET spot-checking and continuous monitoring, digital care pathways, and remote patient surveillance.

17. The Masimo SafetyNet® system was originally conceived to allow those taking opioids to be monitored continuously for dangerous decreases in their oxygen levels. But it was rapidly deployed for use during Covid-19 to allow hospitals to continuously monitor patients from their homes, when overcrowding at hospitals was plaguing healthcare. Morgan Freeman narrated

Masimo's "Together in hospital. Together at home" commercial during the pandemic. That commercial can be seen at <https://www.youtube.com/watch?v=XyCWuSrmmMM>. This advertisement ran on nearly every major US television channel for months in 2020.

18. News outlets also reported on how Masimo's technology was helping clinicians respond to the pandemic by making its medical technology available for home use. The following links show some of that coverage: <https://www.youtube.com/watch?v=DmGwGCcY0-g>; <https://www.youtube.com/watch?v=WRZJC9KKrI>; <https://www.youtube.com/watch?v=eJBI6zIkqIw>.

19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. Masimo's newest offering in its telehealth product suite is the Masimo Watch W1®, which is shown below. The W1® uses Masimo SET® technology to obtain oxygen saturation, pulse rate, and respiration rate along with other measurements and for the first time ever a hydration index, indicating the hydration level of the person wearing W1®. It is a natural progression from the Radius PPG, providing a durable watch-style wearable for unobtrusive every-day use. The W1® is a medical-grade wrist-wearable *continuous* medical monitor that also



includes a watch and some other common health features such as step counting and calories expended. More information about the W1® can be found at the following link:

<https://www.masimopersonalhealth.com/products/masimo-w1>.



21. As seen above, the W1® has a common computer-on-the-wrist appearance, like a Casio or the early Sony smartwatches. The W1® was first made available to hospitals. After people remarked that the watch “is a game-changer for healthcare,” Masimo made the W1® available directly to consumers. Consumers can now buy a Masimo W1®, and obtain the same medical grade technology, in a wearable watch form factor shown above.

22.

[REDACTED]

[REDACTED]

[REDACTED]

23.

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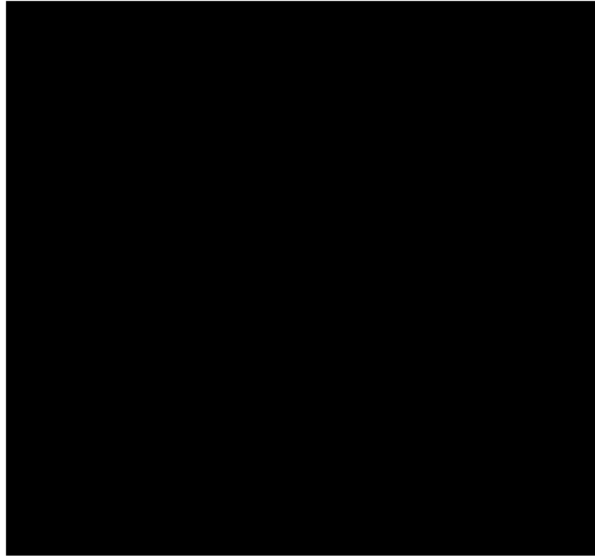
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[REDACTED]

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24. In 2013, after the iSpO2 product had been on the market for a while, [REDACTED]

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25. [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]

26. [REDACTED] Apple hired Masimo's Chief Medical Officer—Dr. Michael O'Reilly. Through Dr. O'Reilly, [REDACTED]

[REDACTED]

[REDACTED] Apple then hired Cercacor's Chief Technical Officer—Marcelo Lamego, and has since hired many employees from Masimo and Cercacor.

27. Marcelo Lamego was one of several key engineers for Masimo and Cercacor. For several years, Lamego shared an office with Mohamed Diab, who practically co-founded Masimo along with me. Lamego was put in this office with Diab so Lamego could learn everything possible from Diab. I ultimately had planned that Lamego would succeed Diab. Lamego was assigned to work on some of Masimo's and Cercacor's most complex and secret technical issues involving noninvasive physiological monitoring with Diab's supervision, teaching and guidance. Lamego rose through the ranks at Masimo and Cercacor, and I ultimately selected him to become Cercacor's Chief Technical Officer. Lamego had complete and unfettered access to Masimo's and Cercacor's confidential technology. And, he had been taught by the brightest engineers at Masimo, including those responsible for delivering breakthrough non-invasive monitors used by hospitals today. Lamego's experience prior to Masimo, although involving signal processing, was not directed at noninvasive medical monitoring, much less pulse oximetry.

28. After Lamego joined Apple, Apple filed patent applications that named Lamego as an inventor. Those patent applications were directed toward technologies Lamego worked on at Masimo and Cercacor, and with which he had no prior experience or knowledge.

29. On August 9, 2022, I participated in Masimo's Second Quarter 2022 Earnings Conference Call.

30. During the call, Mike Matson asked: "With the consumer strategy about the smartwatch, maybe you could talk about what you think it is about your smartwatch, the W1® or

the upcoming FREEDOM watch, which is really going to kind of help differentiate you in the market versus some of the bigger companies out there like Apple or Samsung.”

31. I responded as follows:

Well, during the limited market release phase, I'll tell you what our customers are telling us. They have never had a product that allows them to do the things they've been wanting to do. So, for example, the continuous and accurate information on oxygen saturation and pulse rate. It's not been there. And whether it's used for sending patients home from hospitals, patients that are at risk that what that needs to be monitored remotely, or even athletes that use some of that information for better training, and better preparing for competition, they're telling us, it is different. It's unique. And it's compelling.

In addition, we have some unique new parameters that have never been released in a commercial watch before, for both healthcare and consumer wellness, which we're hoping to release with the launch of W1. And then as far as FREEDOM, I want to just tell you the things I said before and know more because of the competitive nature of this business. But we believe we have a compelling design, we believe with the addition of the Android features, and some unique features that, again, have never been made available before. We think we have a great product.

So we think we have a product that should command 100% market share, which is what you want to have, what you want, for your team to feel. So the question is, do we have now the right distribution channel and the right salesforce, to hopefully make the most out of it? And time will tell, but we've never been better prepared. And we, I can tell you, the whole united Masimo team is excited. We're all grateful for the efforts that they have put in to date. But we're going to have a lot of work ahead of us.

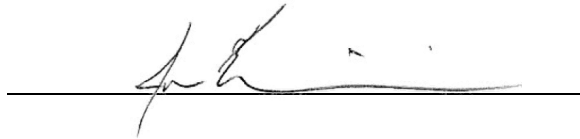
And I think it's revitalizing our team.

32. I understand that Apple is relying on my statement that “we think we have a product that should command 100% market share” in its motion for expedited discovery. If Apple is arguing or otherwise suggesting that I meant that Masimo expects 100% of all smartwatch sales with the W1® watch, Apple mischaracterizes my statement.

33. When I said we have a product that “should command 100% market share,” I was discussing sales to customers that purchase a wearable for physiological monitoring functions. In other words, because the W1® and FREEDOM watches use clinical-grade technology and give continuous and accurate measurements, any consumer that seeks physiological monitoring functions from a watch should choose to purchase a Masimo watch because of Masimo’s superior physiological monitoring functions. Also, I have made similar statements about other products that have been in the market for much longer and for which Masimo has nothing near 100% market share. I do, however, believe that for the betterment of society, it is important that our products be so good that they be the only products people want to purchase, even if they choose otherwise. In other words, I believe that our products must be very compelling and better than other products. When we deliver on that, then we expect to become number 1 or number 2 for such products, but only if there is a fair competitive environment where, for example, others do not steal our intellectual property.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 17, 2022 in Irvine, California.



**CERTIFICATE OF SERVICE**

I, Megan C. Haney, hereby certify that on November 17, 2022, a copy of Declaration of Joe Kiani in Support of Defendants Masimo Corporation and Sound United, LLC's Opposition to Plaintiff Apple Inc.'s Motion for Expedited Discovery was served on the following in the manner indicated below:

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